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**UNITED STATES DISTRICT COURT**  
**DISTRICT OF NEVADA**

NYLMA KABILING, an individual, and  
HIX KABILING, an individual,

Plaintiffs,

v.

WELLS FARGO, et al.,

Defendants.

2:10-CV-1471 JCM (RJJ)

**ORDER**

Presently before the court is defendants Wells Fargo's, Wachovia Mortgage's and World Savings Bank's motion to dismiss plaintiff's complaint. (Doc. #7). Defendant Fidelity National Title filed a joinder to the motion. (Doc. #9). To date, the plaintiff has not responded, but did file an affidavit of one "Marla Giddings," to which is attached a "forensic audit" of plaintiff's mortgage. (Doc. #11).

"When ruling on a motion to dismiss, we may generally consider only allegations contained in the pleadings, exhibits attached to the complaint, and matters properly subject to judicial notice." *Coos Cnty. Bd. Of Cnty. Comm'rs v. Kempthorne*, 531 F.3d 792, 811 n. 14 (9th Cir. 2008) (internal citations omitted). The affidavit and audit submitted by the plaintiff do not qualify as judicially noticeable documents, nor do they fit into one of the other enumerated categories, nor do they respond to the substance of the motion to dismiss.

Accordingly, the plaintiff has failed to offer any opposition to the motion. Local Rule of Civil Procedure 7-2(d) provides that "[t]he failure of an opposing party to file points and authorities in

1 response to any motion shall constitute a consent to the granting of the motion.” However, prior to  
2 dismissal, the district court is required to weigh several factors: “(1) the public’s interest in  
3 expeditious resolution of litigation; (2) the court’s need to manage its docket; (3) the risk of  
4 prejudice to the defendants; (4) the public policy favoring disposition of cases of their merits; and  
5 (5) the availability of less drastic sanctions.” *Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (citing  
6 *Henderson v. Duncan*, 779 F.2d 1421, 1423 (9th Cir. 1986)).

7       Whereas the plaintiff has failed to respond, and weighing the factors identified in *Ghazali*,  
8 the court finds dismissal appropriate.

9       Accordingly,

10       IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that defendants’s motion to  
11 dismiss (doc. #7) is hereby GRANTED. The case as to defendants Wells Fargo, Wachovia Mortgage,  
12 Fidelity National Title and World Savings Bank is DISMISSED without prejudice.

13       IT IS FURTHER ORDERED that notice of pendency of action or lis pendens on the property  
14 (doc. #3) is hereby released.

15       DATED December 22, 2010.

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18 **UNITED STATES DISTRICT JUDGE**